DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 96-0050; 96-0052; 96-0053; 95-0431
INDIANA CORPORATION INCOME TAX
For Years 1989, 1990, 1991, 1992, and 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Assessment of Proposed Federal RAR Adjustment Prior to Issuance of the Final Federal RAR: Adjustment of Federal Taxable Income.

Authority: IC 6-3-1-3.5(b); IC 6-3-4-6(b); IC 6-5.5-1-2; Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996).

Taxpayer is protesting the auditor's determination that taxpayer's 1992 income taxes should be adjusted to reflect the findings of a proposed RAR (Federal Revenue Agent's Report). The Internal Revenue Service issued a final RAR adjustment on December 13, 1998. Taxpayer maintains that it filed amended returns, relating to the final federal RAR adjustment, within the statutory 120 days. Taxpayer argues that the assessment, based on the Federal RAR adjustment of $1,753,000, should be removed from the audit report.

II. Gross Income Tax Credit.

Authority: IC 6-2.1-2 et seq.; IC 6-3-2 et seq.; IC 6-3-3-2.

The taxpayer argues that the auditor improperly calculated adjusted gross income tax for 1989 and 1990 by failing to give proper credit for gross income tax imposed on the members of the affiliated group.

III. Adjusted Gross Income Calculation.

Authority: IC 6-3-2-2(b); IC 6-3-2-2(l); 45 IAC 3.1-1-62.

Taxpayer protests the auditor's method of calculating adjusted gross income because the calculation was not completed on an individual entity basis. Taxpayer maintains that the method employed by the auditor resulted in a tax disproportionate to the income derived from Indiana activities. The taxpayer argues that it should be allowed to use an alternative apportionment method in order to produce an adjusted gross income tax that is proportionate to its Indiana source income.

Statement of Facts

The taxpayer is a manufacturer of various forms of electric wire and cable. Taxpayer sells its products to automobile and appliance component manufacturers. Taxpayer produces coated wire for construction and general industrial use. Taxpayer also produces wire and cable for telephone and industrial distribution. The taxpayer files a consolidated Indiana return together with a number of its subsidiaries.

DISCUSSION

I. Assessment of Proposed Federal RAR Adjustment Prior to Issuance of the Final Federal RAR.

Taxpayer protests the auditor's decision to adjust its 1992 income to reflect a federal RAR determination for 1990-91. The taxpayer maintains that the adjustment of its income, prior to the issuance of a final RAR adjustment on December 13, 1998, was improper. Taxpayer asserts that once the final RAR was issued, taxpayer timely and properly, pursuant to IC 6-3-4-6(b), filed an amended return to reflect the final federal adjustment.

IC 6-3-1-3.5(b) provides the starting point for determining taxpayer's taxable income stating that the term "adjusted gross income" shall mean "In the case of corporations, the same as 'taxable income' (as defined in Section 63 of the Internal Revenue Code) . . . ." *(See also IC 6-5.5-1-2)* The Department's Administrative Rules restates the principle at 45 IAC 3.1-1-8 stating that "'Adjusted Gross Income' with respect to corporate taxpayers is 'taxable income' as defined in Internal Revenue Code section 63 . . . ." In Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996), the court held that the code provision was "plain and unambiguous." Id. at 1213. "Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. § 63, not as reported by the taxpayer." Id. Therefore, "the issue [becomes] not what number appears on line 28 of a taxpayer's federal income tax form 1120 but whether a particular item of income was included in taxable income pursuant to I.R.C. § 63." Id. The taxpayer's income is determined by the standards set forth in I.R.C. § 63 (subject to certain adjustments peculiar to Indiana and irrelevant here) and not by what the taxpayer may or may not have incorrectly or inadvertently reported on its 1990-91 tax forms. When it became apparent that taxpayer misstated its federal taxable income, it was entirely appropriate for the auditor to adjust the taxpayer's Indiana return accordingly.

The Department has reviewed the taxpayer's various filings and finds that taxpayer is incorrect in its assertion that it filed an amended return reflecting the RAR adjustment. Taxpayer did submit correspondence to the Department that reports the relevant RAR together with a payment reflecting the taxpayer's increased liability. Upon review and verification of the RAR's and the correctness of taxpayer's informal submission, taxpayer will be allowed a credit reflecting that payment.

FINDING

Taxpayer's protest is respectfully denied.

II. Gross Income Tax Credit:

The taxpayer argues that the auditor improperly calculated adjusted gross income by failing to give proper credit for gross income tax imposed on the members of the taxpayer's affiliated group.

A corporation with Indiana source income is subject to three separate taxes; gross income tax, adjusted gross income tax, and supplemental net income tax. IC 6-3-3-2 permits a credit to corporations against the adjusted gross income tax, imposed under IC 6-3-2 et seq., in the amount equal to any gross income tax, imposed under IC 6-2.1-2 et seq., for the same taxable year. The effect of the credit authorized under IC 6-3-3-2 is to subject the taxpayer to the greater of the adjusted gross income tax or the gross income tax plus the supplemental net income tax.

Taxpayer's original 1989 through 1993 returns included taxpayer affiliates A, B, and C. Taxpayer affiliates D and E did not file returns during the years in question. The audit determined that all five of taxpayer affiliates (A through E) qualified to file adjusted gross income tax and that affiliates A and B qualified to filed consolidated gross income tax. To enable a comparison of the two taxes, separate audits were conducted for affiliates C, D, and E in order to determine gross income tax. The audit then compared the adjusted gross and gross income tax liability for all five affiliates. The comparison was accomplished by comparing the two taxes on a per affiliate basis and calculating the credit based on the greater of the two.

Taxpayer challenges audit's methodology. Under taxpayer's proposed scheme, the total gross income tax of all five affiliates would be computed and applied as the credit. Audit concedes that taxpayer's proposed methodology operates to produce an equitable result because taxpayer is given the treatment it would be allowed if all five affiliates had filed on a consolidated basis.

Under the provisions of IC 6-3-3-2, taxpayer, by utilizing its proposed methodology, should be permitted to receive a full credit against its adjusted gross income for the amount of gross income tax paid.

FINDING

Subject to audit verification, the taxpayer's protest is sustained.

III. Adjusted Gross Income Calculation.

Taxpayer argues that the apportionment method employed by audit in calculating taxpayer's adjusted gross income tax liability was incorrect because the method resulted in a tax that was disproportionate to the income derived from taxpayer's Indiana activities.

IC 6-3-2-2(b) provides for a standardized formula for determining the tax liability of a corporation which receives income from sources both within and outside the state. That section states that "if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three . . . ."

Taxpayer argues that, under IC 6-3-2-2(l), it should be permitted to use an alternate method of apportioning its income. That section states that "[i]f the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any of the taxpayer's business activity, if reasonable: (1) separate accounting; (2) the exclusion of any one (1) or more of the factors; (3) the inclusion of (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income."

Taxpayer argues that the standard three-factor formula results in an increase in its average apportionment factor and an increase in its adjusted gross income. Taxpayer Letter, Oct. 18, 2000, p. 4. As an alternate, taxpayer maintains that, under the provisions of IC 6-3-2-2(l), it should be permitted to use an alternative method of apportioning its income. According to the taxpayer, this results in an adjusted gross income tax that most fairly reflects its Indiana source income. Id.

Taxpayer has clearly established that the use of an alternative apportionment methodology would have the result in taxpayer receiving a more favorable tax treatment. Taxpayer Letter, Oct. 18, 2000, Exhibit B. However, taxpayer has failed to meet the standard set out in 45 IAC 3.1-1-62 that would permit the use of the taxpayer's proposed method of apportionment. That regulation anticipates that such a proposed apportionment methodology would be employed only "in limited and unusual circumstances (which ordinarily will be unique and nonrecurring) when the standard apportionment provisions produce incongruous results." Having failed to establish that the apportionment methodology taxpayer initially selected leads to an "incongruous result[]" and that the particular circumstances surrounding the preparations of taxpayer's 1989 through 1993 tax returns were "unique and nonrecurring," the Department must decline taxpayer's invitation to recalculate its 1989 through 1993 income tax liabilities.

FINDING

Taxpayer's protest is respectfully denied.

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